

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 CIAE-00 DODE-00 PM-04 H-02

INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 SAJ-01 ACDA-05 IO-10 /075 W

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R 251645Z NOV 75

FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC PRIORITY 1698

AMEMBASSY BERLIN

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E.O. 11652: GDS

TAGS: PGOV, PFOR, GW, UR, WB

SUBJECT: SOVIET PROTEST ON INVALIDATION OF BERLIN ELECTIONS

REF: BONN 19086

1. OUR OWN FSI-BRAND RUSSIAN BUTTRESSED BY NATIVE
SPEAKER CLOSE TO MISSION LEADS US TO CONCLUDE
THAT IN RUSSIAN TEXT OF ANNEX II OF QA ANTECEDENT
OF "WHICH" MUST BE "PROVISIONS". WERE "WHICH"
TO REFER TO BASIC LAW AND CONSTITUTION, IT, LIKE
THEM, WOULD HAVE BE IN GENITIVE CASE, BUT IN PLURAL
I.E., "KOTORYKH". AS REFTEL POINTS OUT, MOREOVER,
EFFECT WOULD BE THAT BERLIN CONSTITUTION AS WELL
AS BASIC LAW WERE NOT IN EFFECT IN BERLIN DESPITE
SOVIET ACCEPTANCE ELSEWHERE IN QA OF "EXISTING
SITUATION."

2. IN TRANSLATING RUSSIAN TEXT OF PROTEST, WE
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TRIED TO DO JUSTICE TO WHAT WAS SLOPPY DRAFTING.

WHEN SOVIETS WERE SAYING IN PLAIN ENGLISH, IN OUR VIEW, WAS NOT THAT ENTIRE BASIC LAW AND ENTIRE BERLIN CONSTITUTION HAVE BEEN SUSPENDED, BUT THAT ANY AND ALL PROVISIONS OF THESE TWO DOCUMENTS THAT CONTRADICT QA STATEMENT THAT BERLIN IS NOT GOVERNED BY FRG HAVE BEEN SUSPENDED, INCLUDING IN PARTICULAR ARTICLE 28 OF BASIC LAW ON WHICH ELECTION REVIEW COURT LAID STRESS. THE REAL POINT SOVIETS MAY HAVE BEEN TRYING TO ASSERT WAS THAT FOUR POWERS MADE COMMITMENT IN 1971 THAT SUCH PROVISIONS WOULD BE SUSPENDED FROM THAT DATE FORWARD. OUR VIEW, OF COURSE, IS THAT QA MERELY CONFIRMED, BUT DID NOT SUPPLEMENT, LONG-EXISTING SITUATION. DESPITE MINOR DISCREPANCIES BETWEEN ENGLISH AND RUSSIAN TEXTS ON THIS CRUCIAL POINT OF TIMING, BOTH TEXTS ARE RATHER CLEAR THAT PREVIOUSLY EXISTING SITUATION WAS CONFIRMED. THUS ENGLISH TEXT SAYS " ... HAVE BEEN SUSPENDED AND CONTINUE NOT TO BE IN FORCE," AND RUSSIAN TEXT, WHILE AVOIDING THE PAST TENSE WITH "SUSPENDED" SAYS "AND AS BEFORE ARE NOT IN EFFECT."

3. WE DOUBT THAT IT WOULD BE ADVANTAGEOUS TO INSERT SENTENCE SUGGESTED REFTEL, PARA 6, SINCE SOVIETS MIGHT THEN HAVE OPENING TO ARGUE THEIR POINT OF VIEW THAT ANY PARTICULAR ARTICLE OF EITHER BASIC LAW OR BERLIN CONSTITUTION SHOULD THEREFORE BE SUSPENDED BECAUSE, OBJECTIVELY SPEAKING, IT APPEARS TO CONTRADICT FACT THAT BERLIN IS NOT TO BE RULED BY FRG. GIVEN CHANCE WE ARE SURE SOVIETS COULD FIND MANY MORE SUCH ARTICLES WHICH "SHOULD" BE SUSPENDED. WE WOULD FAVOR INSTEAD PRIMING POLAD WITH ADDITIONAL MATERIAL TO ARGUE, IF SOVIETS CHOOSE NOT TO ACCEPT OUR SUGGESTED BRIEF RESPONSE, THAT "CONTINUES NOT TO BE IN FORCE" OF ENGLISH TEXT AND "AS BEFORE" OF RUSSIAN TEXT, COMBINED WITH QA'S "EXISTING SITUATION" LANGUAGE MAKES CLEAR THAT ONLY WHAT WAS SUSPENDED BEFORE 1971 IS NOW SUSPENDED. POLAD MIGHT ALSO HAVE AT FINGERTIPS, FOR USE AS NECESSARY, FACTS THAT THOSE LIMITED OFFICIAL USE

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PROVISIONS OF BASIC LAW AND OF BERLIN CONSTITUTION WHICH WERE SUSPENDED PRIOR TO QA ARE ONLY ARTICLE 23 OF FORMER (1949 ALLIED LETTER TO PRESIDENT OF PARLIAMENTARY COUNCIL) AND ARTICLE 1, PARAS 2 AND 3 OF LATTER(BK/O(50)75). HE COULD THEN POINT OUT TO SOVIETS THAT BK/O(50)75, IN ITS DISCUSSION OF ARTICLE 87 OF BERLIN CONSTITUTION, GIVES EXPLICIT ALLIED AUTHORIZATION FOR BERLIN

COURT TO RESOLVE CONFLICT BETWEEN ARTICLES OF
BASIC LAW AND OF BERLIN CONSTITUTION IN FAVOR OF
FORMER, WHICH IS WHAT ELECTORAL COURT DID IN THIS
INSTANCE. GEORGE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GOVERNMENT REACTION, MUNICIPAL GOVERNMENT, LOCAL ELECTIONS, DIPLOMATIC PROTESTS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 NOV 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ElyME
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975USBERL02361
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750410-0581
From: USBERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751114/aaaaalwh.tel
Line Count: 119
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 BONN 19086
Review Action: RELEASED, APPROVED
Review Authority: ElyME
Review Comment: n/a
Review Content Flags:
Review Date: 29 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <29 MAY 2003 by ShawDG>; APPROVED <22 OCT 2003 by ElyME>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SOVIET PROTEST ON INVALIDATION OF BERLIN ELECTIONS
TAGS: PGOV, PFOR, GE, UR, WB
To: BONN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006